

Calendar No. 1965

86TH CONGRESS }
2d Session }

SENATE

{
REPORT
No. 1895

LEGAL GUARDIAN OF JOHN DAVID ALMEIDA, A MINOR

AUGUST 22, 1960.—Ordered to be printed

Mr. CARROLL, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 4428]

The Committee on the Judiciary, to which was referred the bill (H.R. 4428) for the relief of the legal guardian of John David Almeida, a minor, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the bill is to pay to the legal guardian of John David Almeida, a minor, the sum of \$15,000 in full settlement of the claims of the child against the United States for the loss of his left eye as the result of its being struck by a splinter of glass when a window in the Government quarters in which the child lived was shattered on May 13, 1957.

STATEMENT

As introduced, the bill provided for an award of \$100,000. The Committee on the Judiciary of the House of Representatives amended the bill to provide for the payment of \$15,000.

The facts in the case as summarized by the Department of the Air Force in a letter, dated March 26, 1959, to the Committee on the Judiciary of the House of Representatives, are as follows:

The events upon which this claim is based occurred on May 13, 1957 at Sergeant Almeida's assigned Government

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quarters at Otis Air Force Base. At the time of the accident, Sergeant Almeida and a neighbor, Staff Sgt. Robert E. Richards, were off duty and in the back yard of the Almeida quarters. The Almeida child was in the house, looking out of a window. Sergeant Richards tapped on the window either in response to the child or to engage the child's attention, and the window broke. Sergeant Richards avers, however, that the actual breakage of the window was caused by the child's striking the window with a toy held in his hand. A splinter of glass entered the child's left eye necessitating eventual removal of the eye.

Inspection of the window revealed that the windowpane had been properly installed and maintained in all respects, and further revealed no connection between any act of the United States and the child's injury.

Sergeant Almeida was then advised that there was no apparent legal liability on the part of the United States, but that he was free to file any kind of a claim that he might choose. However, no claim has been filed as of March 6, 1959.

Sergeant Almeida subsequently filed a civil suit in the courts of Massachusetts against Sergeant Richards in the amount of \$250,000. The court awarded him a \$500 judgment.

On August 4, 1958 the Almeidas brought suit against the United States in the U.S. District Court for Massachusetts, civil case No. 58-803-W, for \$210,000. This suit was brought under the Federal Tort Claims Act (28 U.S.C. 1346(b)). In January 1959, the court directed a verdict for the United States on the grounds that the relationship between the United States and Almeida was that of landlord and tenant, and that under Massachusetts law (which, for the purposes of this case, is controlling under the Tort Claims Act), no basis for liability existed.

Accordingly, the Department of the Air Force recommends against enactment of H.R. 4428. The legislation would create an undesirable precedent and would be discriminatory against other claimants who have suffered similarly.

The sponsor of the legislation in the House of Representatives appeared before the Committee on the Judiciary of the House and that committee went into the circumstances of the case in some detail. The facts and conclusions in the case as set forth in the report on the bill by the Committee on the Judiciary of the House of Representatives are as follows:

On May 13, 1957, John David Almeida, then 17 months of age, was sitting in a high chair in the kitchen of family quarters assigned to his father, Air Force S. Sgt. John E. Almeida, when another serviceman, S. Sgt. Robert Richards appeared outside of the window near the child and tapped on the window. The window broke and a splinter of glass lodged in the child's eye. As is noted in the Air Force report, there is some conflict as to whether the child also struck the window with a toy; however, the child's parents state that the baby

could not have hit the window with a toy train since they didn't own one. This committee feels that the basic point involved in this matter is the condition of the window itself. The Air Force report merely states that "Inspection of the window revealed that the windowpane had been properly installed and maintained in all respects" and further avers that the inspection revealed no connection between any act of the United States and the child's injury. This committee feels that the facts presented in support of the claim present a different picture, and establish a definite basis for legislative relief in this instance. The child's mother, Mrs. Caroline Almeida, stated concerning the condition of the window prior to the accident:

"I reported to the Air Installations Office at Otis on many occasions that the windows were in bad condition and that they were dangerous. Furthermore the windows had no putty on them. The Air Force representatives who were notified agreed that the matter needed repairing and agreed to repair it, but never got around to it."

Pictures of the windows in question were submitted to the committee in connection with this matter. These pictures tend to bear out the statement of the child's mother in her affidavit filed with the committee. The pictures disclose the general rundown condition of the windows. The information supplied to the committee shows that the windows were loose due to missing putty, and that in addition they were cracked in places. The committee has, therefore, concluded that the unsafe condition of the window was the principal factor in this unfortunate train of events. It is obvious from the facts of this case that the quarters were intended for the use of the families of servicemen, and it must have been anticipated that children would be in the area. Regardless of the minor question referred to in the Air Force report concerning just how the window was struck, it is clear that it was tapped or at the most hit an insubstantial blow of a sort which should not have caused the result described above. However, a loose and poorly maintained window would be expected to break under such conditions. To allow such conditions to exist is to almost invite occurrences such as this one. Accordingly, this committee has concluded that it is only just to recognize a responsibility on the part of the Government to this child.

After the window shattered, the child was given emergency treatment and was eventually taken to the Chelsea Naval Hospital. Efforts were made to save the eye, but it ultimately was necessary to remove the eye.

The Air Force report notes that the parents were unsuccessful in their attempt to recover under the Federal Tort Claims Act. The court in that action ruled that under Massachusetts law they were required, as tenants, to accept the premises as they found them. The committee has carefully considered this circumstance along with the small amount recovered against the other serviceman, and has concluded that there is a moral responsibility on the part of

the United States to compensate this small child for his life-long disability. The committee felt that the bill should be amended so as to provide for a \$15,000 payment to the legal guardian of the child in lieu of the original provision of a payment of \$100,000 to the parents. The committee, therefore, recommends that the bill be amended to provide for such a \$15,000 payment to the legal guardian of the child, and that the amended bill be considered favorably.

The committee has been advised that an attorney has rendered substantial services in connection with this matter. Therefore, the bill contains the customary attorney's fee proviso.

The committee believes that the bill, as passed by the House of Representatives, is meritorious and recommends it favorably.

Attached and made a part of this report is a letter, dated March 26, 1959, from the Department of the Air Force.

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY,
Washington, March 26, 1959.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request for a report from the Department of the Air Force on H.R. 4428, 86th Congress, a bill for the relief of S. Sgt. John E. and Mrs. Caroline Almeida.

H.R. 4428 provides for the payment of \$100,000 to S. Sgt. John E. and Mrs. Caroline Almeida, Otis Air Force Base, Falmouth, Mass., in full settlement of their claim against the United States for the loss of an eye by their son, John David Almeida. The events upon which this claim is based occurred on May 13, 1957 at Sergeant Almeida's assigned Government quarters at Otis Air Force Base. At the time of the accident, Sergeant Almeida and a neighbor, S. Sgt. Robert E. Richards, were off duty and in the backyard of the Almeida quarters. The Almeida child was in the house, looking out of a window. Sergeant Richards tapped on the window either in response to the child or to engage the child's attention, and the window broke. Sergeant Richards avers, however, that the actual breakage of the window was caused by the child's striking the window with a toy held in his hand. A splinter of glass entered the child's left eye necessitating eventual removal of the eye.

Inspection of the window revealed that the windowpane had been properly installed and maintained in all respects, and further revealed no connection between any act of the United States and the child's injury.

Sergeant Almeida was then advised that there was no apparent legal liability on the part of the United States, but that he was free to file any kind of a claim that he might choose. However, no claim has been filed as of March 6, 1959.

Sergeant Almeida subsequently filed a civil suit in the courts of Massachusetts against Sergeant Richards in the amount of \$250,000. The court awarded him a \$500 judgment.

On August 4, 1958, the Almeidas brought suit against the United States in the U.S. District Court for Massachusetts, civil case No. 58-803-W, for \$210,000. This suit was brought under the Federal Tort Claims Act (28 U.S.C. 1346(b)). In January 1959, the court directed a verdict for the United States on the grounds that the relationship between the United States and Almeida was that of landlord and tenant, and that under Massachusetts law (which, for the purposes of this case, is controlling under the Tort Claims Act), no basis for liability existed.

Accordingly, the Department of the Air Force recommends against enactment of H.R. 4428. The legislation would create an undesirable precedent and would be discriminatory against other claimants who have suffered similarly.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

LYLE S. GARLOCK,
Assistant Secretary of the Air Force.

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Edward Almida subsequently filed a bill and in the month of Massachusetts area of \$250,000. The court awarded him a \$250,000 judgment.

On August 1, 1952, the Almida Court and against the United States in the Federal Court for Massachusetts and case No. 22-208-W for \$250,000. This suit was brought under the Federal Tort Claims Act (28 U.S.C. 1346). In January 1953, the court directed a verdict for the United States on the grounds that the relationship between the United States and Almida was that of land-tenant and tenant, and that under the contract law which for the purpose of this case is controlling under the Tort Claims Act, no basis for liability existed.

Accordingly, the Department of the Air Force respondents against enactment of H.R. 3321. The legislation would create an independent precedent and would be discriminatory against other citizens who have suffered similarly.

The House of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

Lawrence S. Gardner

Legal Guardian of the Air Force